Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

REPLY COMMENTS OF
THE COALITION FOR CAPACITY-BASED ACCESS PRICING

July 20, 2005

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Summary

The majority of commenters agree the existing intercarrier compensation (ICC) system is broken and must be replaced. They also recognize that existing intercarrier compensation rates must be equalized and that artificial differences in rates created in the past are not sustainable in the future. However, to simply adjust or "tweak" the current ICC regime would yield a solution likely to be obsolete before implementation. The solution for resolving intercarrier compensation issues on the circuit-switched network must consider how traffic will be exchanged and settled in the emerging packet network. At minimum, the solution must adhere to this principle: future pricing for circuit-switched traffic must resemble pricing on the IP network. The consequence of not following this principle is that the same arbitrage issues occurring for years between jurisdictions will accelerate between technologies.

As the industry confronts the inevitable need to replace the existing ICC regime, it must not forget the underlying purpose for the existing system. In simple terms, ICC is the way carriers providing end-to-end retail services to a customer pay other carriers for the use of other carriers' networks. Historically, ICC provided the means of shifting funds between jurisdictions and services. Specifically, it allowed revenues derived from above-average-priced toll services to be utilized in order to maintain below-average-priced local service, enabling local rates to remain affordable and thus, universally available to all. In addition, in combination with average pricing and pooling, the ICC system provided for the transfer of payments between the lower-cost-to-serve, more densely populated areas of the nation and the higher-cost-to-serve, more sparsely populated areas.

In addressing the reform of the current system, the Commission must fix “how” the mechanism works within the parameters of “why” the mechanism is needed. The new ICC regime must continue to provide for a reasonable and rational compensation mechanism for the use of the Public Switched Telephone Network (PSTN) not simply because it makes economic sense, but also to ensure that carriers serving higher cost areas receive adequate compensation that ensures the continuation of affordable local service and access to advanced services.

As most commenters indicate, universal service and intercarrier compensation are linked inextricably. The primary objective of the Coalition for Capacity-Based Access Pricing (CCAP) in filing reply comments in this proceeding is to highlight the clear distinction between the two mechanisms. This is important because the Commission must distinguish between those eligible to receive the various types of funding and those who should pay for each type of funding. CCAP submits ICC should be tied to support of the existing circuit-switched system and should be funded by all who use or benefit from this system. Simultaneously, universal service policies should be supported by the largest possible contributor base. The CCAP proposal draws the line between these two mechanisms by classifying high-cost loop funding along with the social policy initiatives of schools and library discounts, rural health care, and low income support as universal service support. It proposes the funding base be greatly expanded to support these objectives.

In addition to maintaining the historical purpose of ICC of compensating carriers for the use of their networks, a revised ICC mechanism must also continue ensuring the equal availability of services at comparable rates in urban and rural areas. The CCAP proposal accomplishes this through the establishment of a nationwide connection fee for compensation to carriers for use of their networks and by requiring that funding in excess of the connection fee come from all who have access to the PSTN by assessing phone numbers, the key to entry into the PSTN.

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The Coalition for Capacity-Based Access Pricing (CCAP) submits the following Reply Comments in response to the invitation of the Federal Communications Commission (FCC or Commission) to comment on the FCC's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.[1]

I. Introduction

In response to its FNPRM, the FCC has received initial comments from over 100 parties totaling over 3,000 pages. As the Commission reviews the voluminous filings previously made, considers the reply comments currently being filed, and contemplates the multitude of ***ex-parte*** presentations that will soon be made, CCAP urges the Commission to reflect on the expressed goal of the FNPRM, to develop a new unified Intercarrier Compensation (ICC) Regime to replace the existing intercarrier compensation regime. The majority of commenters recognize that existing intercarrier compensation rates must be equalized and that artificial differences in rates created in the past are not sustainable

[1] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33, rel. Mar. 3, 2005.

in the future. Yet to simply adjust or "tweak" the current ICC regime would yield a solution likely to be obsolete before implementation. The industry's current challenge is how to maintain the ubiquitous voice network that is critical to national safety and infrastructure while encouraging further development of a ubiquitous national broadband network. The solution for resolving intercarrier compensation issues on the circuit-switched network must consider how traffic will be exchanged and settled in the emerging packet network. At minimum, the solution must adhere to this principle: future pricing for circuit-switched traffic must resemble pricing on the IP network. The consequence of not following this principle is that the same arbitrage issues occurring for years between jurisdictions will accelerate between technologies.

As noted above, the majority of parties filing comments agree the existing ICC system is broken and must be replaced. However, to do so without fully addressing the purpose of the existing system could lead to an unmitigated disaster for the world's premier telecommunication system and destroy the possibility for rapid broadband deployment to large portions of the nation.

The current ICC system has been cobbled together over a period of more than twenty years. It has been modified many times to address the myriad of services and technologies that have emerged over the same period. Today, there is genuine concern that the emergence of packet-switched technology will soon lead to the total collapse of the existing ICC compensation system. As the industry confronts the inevitable need to replace the existing ICC regime, it must not forget the <u>underlying purpose</u> for the existing system. The concept of passing compensation between carriers is almost as old as our nation's phone system. In simple terms, ICC is the way carriers providing end-to-end retail services to a customer pay other carriers for the use of other carriers' networks. It is ironic that such a system, which is not really necessary in a pure monopoly environment, grew and developed during a period of restricted competition. Yet, in an era of open competition, when many carriers co-exist to serve the same customer and rely on each other's facilities to do so, many suggest the total elimination of the ICC system and propose to replace it with a bill-and-keep regime.

While it is self-evident that an ICC regime is intended to distribute revenues between carriers in payment for the use of their respective networks, the real significance of ICC actually goes much deeper. Historically, ICC provided the means of shifting funds between jurisdictions and services. Specifically, it allowed revenues derived from above-average priced toll services to be utilized in order to maintain below-average priced local service, enabling local rates to remain affordable and thus, universally available to all. In addition, in combination with average pricing and pooling, the ICC system provided for the transfer of payments between the lower-cost-to-serve, more densely populated areas of the nation and the higher-cost-to-serve, more sparsely populated areas.

By keeping local rates affordable and ensuring revenues were available to support networks in the highest cost-to-serve areas, the ICC mechanism has functioned as a rational cost recovery system and fostered and supported universal service. Indeed, for most of the 20th century, ICC promoted and allowed for the universal availability of telecommunication services at affordable prices. In addressing the reform of the current system, the Commission must fix "how" the mechanism works within the parameters of "why" the mechanism is needed. The new ICC regime must continue to provide for a reasonable and rational compensation mechanism for the use of the Public Switched Telephone Network (PSTN) not simply because it makes economic sense, but also to ensure that carriers serving higher-cost areas receive adequate compensation that ensures the continuation of affordable local service and access to advanced services.

As most commenters indicate, universal service and intercarrier compensation are linked inextricably. If carriers providing service to high cost areas receive appropriate compensation for the use of their networks through ICC, then less direct universal service funding is necessary. In turn, this helps ensure that those using and benefiting from the use of such high cost networks pay their fair share and that funding needs are not disproportionately shifted to the general population. The existing ICC mechanism helped ensure that those benefiting from a universal network, but only those tied to the network, helped pay the cost of deployment of the network in high cost areas.

As the Commission seeks a solution to the current ICC challenge, CCAP believes it must consider where to draw the line between universal service mechanisms and ICC mechanisms. Without this delineation, confusion will abound.

CCAP's primary objective in filing reply comments in this proceeding is to highlight the clear distinction between USF and ICC. This is important because the Commission must distinguish between those eligible to receive the various types of funding and those who should pay for each type of funding. CCAP submits ICC should be tied to support of the existing circuit-switched system and should be funded by all who use or benefit from this system. Simultaneously, universal service policies should be supported by the largest possible contributor base. The CCAP proposal draws the line between these two mechanisms by classifying high cost loop funding along with the social policy initiatives of schools and library discounts, rural health care, and low income support as universal service support. It proposes the funding base be greatly expanded to support these objectives.

In addition to maintaining the historical purpose of ICC of compensating carriers for the use of their networks, a revised ICC mechanism must also continue ensuring the equal availability of services at comparable rates in urban and rural areas. The CCAP proposal accomplishes this through the establishment of a nationwide connection fee for compensation to carriers for use of their networks and by requiring that funding in excess of the connection fee come from all who have access to the PSTN by assessing phone numbers, the key to entry into the PSTN.

While almost all parties agree that there is a link between USF and ICC, no party other than CCAP offers an appropriate solution for separating ICC from USF. Past efforts to reduce ICC rates have been successful in lowering rates, but at the cost of confusing ICC with USF. This docket offers the Commission the opportunity to address the mechanics of ICC and redress previous decisions that have led in part to the current state of confusion and potential collapse of the USF system. Such collapse would have catastrophic impacts on rural America and severely cripple the recent strides the nation has made in broadband deployment.

II. Commenters Generally Agree with Core Principles of CCAP's ICC Plan

A. Network Providers Must be Compensated by Network Users

Several of the core principles espoused by CCAP are shared by a variety of commenters. One such principle is that users of local exchange carrier networks should pay for their use of the network. While the payment for network use is such a fundamental principle, in some discussions of intercarrier compensation reform, certain parties either forget or ignore the fact that rural local exchange carriers (RLECs) have network costs that must be recovered in order for their operations to remain viable. These network costs are actual costs incurred by the RLECs for infrastructure investment or the operation of their networks.

CCAP strongly voices its collective view that network costs currently recovered by RLECs from interconnecting telecommunications carriers, ***e.g.***, long distance providers, CMRS providers, etc., for the use of the RLECs' networks should continue to be recovered from the interconnecting carriers. CCAP recognizes the long-term efforts of long distance providers to systematically reduce access charges with the goal of eliminating access charges altogether. CCAP disagrees with these efforts. <u>Users of RLEC networks should be required to pay for their use-incurred cost of these networks.</u>

The network functionality used by interconnecting carriers includes transport network functions, tandem and/or local switching functions and local loop functions. For these network functionalities, the RLECs have investment and operational expenses that must be adequately recovered. In an attempt to avoid paying for their use-incurred cost of these network functions, interconnecting carriers have and are attempting to move the cost recovery to others in order to avoid their allocated payment of these costs. For example, in an attempt to move the per-minute rate below the RLECs' cost of providing these services, certain carriers support moving the cost recovery of legitimate network costs to federal universal service support programs. Such efforts should be rejected. There is no rationale to support the effort to move the intercarriers' fees away from the users of the network. CCAP has a plan to allow these interconnection costs to be rated on a capacity basis rather than a per-minute basis. Going forward, these costs are more appropriately recovered on a capacity basis than on a per-minute basis. Nevertheless, changing the rate structure within the intercarrier interconnection regime is far different from arbitrarily setting a "rate" for interconnection and dumping the residual into universal service.

Leaving aside the legitimate question of whether intercarrier costs are allowed to be included in "universal service" -- inasmuch as they do not appear to satisfy the criteria the Commission has established for universal service – there are sound public policy reasons not to include these intercarrier interconnection costs as part of universal service. Foremost among these policy reasons is the policy of price signaling. Without a proper cost-based charge for use of the RLEC network, interconnecting carriers will not receive the proper price signal for network use and will consequently use the network inappropriately. The adage "there's no such thing as a free lunch" applies here. Users of the RLECs' networks need to pay the cost of investing in and operating these networks. Without a correct rate level – setting aside the rate structure for now – RLEC networks will not be able to recover their costs from the users of those networks.

Cost can be defined in many ways. Indeed, the Supreme Court has referred to cost as a chameleon, capable of change depending upon the nature of the question.[2] Regardless of their possible varieties, RLEC embedded costs are costs incurred in the provision of telecommunications services. These embedded costs are known, verified and are the only appropriate cost basis from which to establish rate levels for intercarrier compensation. CCAP is concerned with the comments and proposals of several industry factions which suggest establishing cost recovery on something other than RLEC embedded cost. CCAP recommends the Commission strongly reject these efforts, which appear to have no purpose other than to lower the intercarrier compensation levels and move cost recovery to other parties – such as end users.

Many commenters agree that a bill and keep methodology should not be utilized in lieu of today's Calling Party Network Pays (CPNP) based ICC regime. The Public Utilities Commission of Ohio (Ohio PUC) correctly points out that networks cost money to build and maintain and a bill and keep ICC regime would be a disincentive to carriers from

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2 *See Verizon Communications, Inc. et al. v. FCC*, 122 SCt 1646 (2002).

investing in their networks.[3] In its comments, the Indiana Utilities Regulatory Commission correctly points out that there are costs associated with use of a carrier's network and as such, a payment of zero for such use sends improper market signals.[4] CCAP maintains that an ICC regime based on the concept of bill and keep is bad public policy and should be rejected.

B. Establishment of the Point of Interconnection

As indicated in the FNPRM, the Commission notes that the location of the point of interconnection (POI) and the allocation of transport costs are some of the most contentious issues in interconnection proceedings. CCAP does not believe that establishment of an entirely new set of interconnection requirements as proposed by the Intercarrier Compensation Forum (ICF) "Edge" concept is either practical or prudent. Rather than solving many of the critical issues that arise with regard to location of the POI during interconnection proceedings, a new set of interconnection rules will only lead to a new set of complaints and requests for clarification. Instead, CCAP believes that the Commission should retain and clarify, where necessary, the existing network interconnection rules as mandated by the Act.

The CCAP member companies have developed their respective networks over decades. Historically, the only party that the CCAP member companies have had to connect with was the neighboring Regional Bell Operating Company (RBOC). As BellSouth

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3 *See* Comments of the Ohio PUC at 18.

4 *See* Comments of the Indiana Utility Regulatory Commission at 4.

Corporation (BellSouth) points out in its comments, the POI for connecting facilities between two incumbent local exchange carriers (ILECs) has, in many instances, been established at the service area boundary between the carriers with the ownership of the facility divided between the two carriers.[5] The so called “meet-point” between the CCAP companies and the connecting RBOC has also historically defined the amount of transport-related costs that each party billed to interexchange carriers (IXCs) for the origination and termination of access traffic.

With the advent of local competition and rise of Internet Service Providers (ISPs), the location of the POI has become a very significant matter. As BellSouth points out, where an ILEC and RBOC have historically been required to exchange traffic that was formerly treated as toll, on a local basis, each company built and paid for the required facilities on each side of the meet point, which was often the service area boundary between the two companies.[6] Such extended area service (EAS) arrangements allowed for customers residing in one carrier’s service area to call customers served by the other carrier on a toll-free basis. Today, ISPs typically arrange for the establishment of service in an RBOC’s service area so that the ISP’s customers can dial a local number and receive dial-up Internet service on a local basis. However, to the extent that an EAS arrangement exists whereby customers served by another ILEC have the capability of reaching the local number established by the ISP on a toll-free basis, RBOCs such as BellSouth have begun to tariff and assess a transit charge to the ILEC whose end-user subscriber has dialed and connected to the local number serving the ISP. Accordingly, the POI that was

5 *See* Comments of BellSouth at 19.

6 *Id.*

originally established between the ILEC and RBOC for EAS purposes is moved from the original location at the service area boundary between the two carriers to a location deeper within the service area of the RBOC. CCAP maintains that the ILEC should have no obligation to incur the transit charges associated with the "virtual" unilateral movement of the POI under such a situation. Instead, the ISP should be responsible for the payment of any tariff transit charges for traffic terminating to its numbers. Action by the Commission that establishes the default POI at the service area boundary of the rate-of-return ILEC would put an end to such abuses.

While CCAP does not believe it necessary for the Commission to establish an entirely new set of rules and requirements with regard to the interconnection obligations of various parties, the Commission should clarify that ILECs subject to rate-of-return regulation have no financial obligation to deliver traffic - either traffic subject to 251(b)(5) or subject to exchange access rules - to carriers that have established a POI outside the certificated and authorized local service area of the rate-of-return carrier. The Commission should rule that the default POI of a rate-of-return carrier should be within the carrier's service area boundary for each of its exchanges. In the event that a competitive provider establishes a POI outside the rate-of-return carrier's local exchange service area, the competitive carrier should bear all transport costs, both originating and terminating, from its network to the default POI located within the service area boundary of the rate-of-return carrier.

In essence, the default POI location as recommended by CCAP is what many competitive providers are agreeing to when interconnection agreements are being negotiated today. CCAP is not saying that a competitive provider cannot establish a POI outside the authorized local service area of a rate-of-return carrier. Rather, CCAP maintains that if a competitive provider wants to exchange traffic with a rate-of-return carrier on a local basis, it cannot place a de-facto financial obligation on the rate-of-return carrier or its subscribers to deliver rate-of-return carrier originated traffic to the out-of-service-area POI when the rate-of-return carrier has not agreed to such a condition. Even BellSouth acknowledges that ILECs are not required to build facilities outside their authorized serving areas.[7]

For all other carriers, CCAP believes that the default network interconnection arrangement should be a single point of interconnection on an ILEC's network, within each LATA. The default POI can be established at an ILEC-owned tandem office. In the event that an ILEC owns more than one tandem office in a particular LATA, the ILEC must designate one of its tandem offices as the default POI for network interconnection purposes.

C. Need to Unify Existing State and Interstate Jurisdictions

CCAP maintains that none of the ICC reform plans contained in the FNPRM can come to fruition unless the Commission is able to unify the disparate ICC regimes currently in place at the state and interstate levels. While compelling arguments are made by

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7 *See* Comments of BellSouth at 19.

numerous parties both for and against federal intervention over the various intrastate access charge regimes that currently exist, the fact remains that a unified ICC regime cannot exist unless the states move in a direction similar to what the Commission wants to accomplish. CCAP does not believe that any good will come from a prolonged legal battle between the states and FCC with regard to which regulatory body ultimately has control over the access charge regime. Instead, CCAP encourages the FCC and states to work together to come to some agreement that will allow reform of ICC to move forward quickly and in a comprehensive manner.

III. CCAP's Proposed Bulk-Billed Access Charge Mechanism is Superior to Other Mechanisms Proposed by Commenters

A. Support for a Bulk-Billed Access Charge Mechanism

As demonstrated in the comments filed by the National Exchange Carrier Association (NECA) and John Staurulakis, Inc. (JSI), the financial impact associated with several of the plans cited in the FNPRM on rate-of-return carriers would result in a significant shift from existing switched access revenues to an existing or a new USF mechanism.[8] The combined effect of eliminating originating access charges and decreasing terminating access charges as proposed in the ICF and NARUC plans results in an average decrease of over 75 percent in switched access revenues paid to rate-of-return carriers. To make up for the significant decrease in switched access revenues, both the ICF and NARUC plans call for recovery of the access revenue shortfall from a combination of higher SLC charges and additional USF. CCAP believes that any ICC reform proposal that decreases ICC-related revenues to the levels reflected in the ICF and NARUC plans is not

[8] *See* Comments of NECA at 3-11; Comments of JSI at 9-11.

workable, because the level of revenues would not justify the cost of billing and collecting those revenues.

NECA and JSI financial results indicate that the existing USF and any new cost recovery mechanisms play an important role in allowing rate-of-return carriers to continue to provide their customers with affordable basic local exchange service and access to advanced services. In fact, many parties filed comments in support of the recovery of any revenue shortfall resulting from reform to the existing ICC regime from existing, or the creation of new, high-cost recovery mechanisms.

CCAP maintains that the costs to build and maintain the individual carrier networks that make-up the PSTN and that are currently recovered via minute-of-use access charge rates should continue to be recovered in a revenue-neutral manner and from all carriers that utilize the PSTN. As the existing ICC regime reflects rates that are based on the underlying costs of the carriers providing telecommunications services, any new cost recovery mechanism created in the name of ICC reform should not be classified or construed as an explicit support or subsidy mechanism. Unlike amounts that are included in the existing high-cost support mechanisms, any dollars that are reclassified to a new cost recovery mechanism such as the High Cost Connection Fund (HCCF) in the CCAP plan should not be portable to competitive eligible telecommunications carriers (CETCs).

Comments filed by the ICF, The United States Telecom Association (USTA) and TDS Telecommunications Corporation (TDS) support the creation of a non-portable, high-cost recovery mechanism for rate-of-return carriers.[9] These groups recognize the importance and interrelationship between the existing ICC and USF mechanisms in maintaining the provision of affordable basic telecommunications services to all citizens, even those residing in higher cost to serve areas.[10]

CCAP believes it is critical that the Commission establish a clear distinction between what constitutes USF and what constitutes ICC. Such distinctions are very important in that they will ultimately determine who should receive the various types of funding and who should pay for each type of funding. ICC should be tied to support of the existing PSTN and should be funded by all who use or benefit from utilizing the PSTN. On the other hand, universal service should ensure national social policies are funded, and thus, should be supported by the largest possible base of contributors. The CCAP proposal distinguishes between these two mechanisms by classifying high cost loop funding along with the social policy initiatives of schools and library discounts, rural health care, and low income support as universal service support. It proposes the funding base be greatly expanded to support this fund. On the other hand, ICC revenues, both existing state and interstate access charge revenues, reciprocal compensation fees, and those ICC revenues previously transferred into USF (LSS & ICLS) would continue to reflect the underlying embedded costs of building and maintaining the PSTN and would be recovered only from those carriers who utilize the PSTN, via a bulk-billed charge that can be pooled.

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9 *See* Comments of ICF at 34 (TNRM); Comments of USTA at 38-39 (ARM); Comments of TDS at 14.

10 *See* Comments of USTA at 39.

While CCAP maintains that cost recovery dollars transferred to the HCCF should not be portable to CETCs, such amounts would be pooled and any carrier that participates in the HCCF pool would be eligible for receipt of HCCF, based on its own costs. Today, interstate switched access charge rates and the federal high-cost universal service fund mechanisms utilized by rural carriers including HCLS, LSS and ICLS are calculated in accordance with the Commission's Part 32, Part 36, Part 64 and Part 69 rules (including average schedule calculations for applicable companies). The Commission's rules and procedures recognize the use of embedded costs and a unitary rate-of-return in order to calculate both the existing interstate access charge rates and high-cost recovery amounts that rural carriers reflect in tariffs filed with the Commission. For non-rural carriers that are subject to rate-of-return regulation, existing interstate access charge rates are calculated based on the same Commission rules and procedures utilized by rural, rate-of-return carriers while high-cost recovery amounts are calculated in accordance with a forward-looking cost methodology. For CETCs, amounts recovered from the existing high-cost recovery mechanisms are based on the per-line amounts received by the incumbent ETC.

CCAP believes that any CETC should be allowed to participate in the HCCF pool so long as it is willing to determine its costs in accordance with the Commission's Part 32, Part 36, Part 64 and Part 69 rules and procedures and adopt the same carrier-of-last-resort obligations as the incumbent LEC providing service throughout its designated service area. In its comments, the Ohio PUC recommends that any additional USF resulting from ICC reform be made available only to those carriers willing to act as carriers-of-last-resort for the provision of basic telephone service.[11] Otherwise, CCAP agrees with the position taken by USTA that the only recipients of any additional high-cost support created as a result of ICC reform should be those carriers that have provided access services. For non-rural carriers that are subject to rate-of-return regulation, all switched access charge revenues that would be displaced as a result of any ICC reform plan adopted by the Commission should be eligible for inclusion in the HCCF pool. In addition, CCAP recommends that any LSS and/or ICLS being received by non-rural, rate-of-return carriers be based on their embedded costs or appropriate average schedules and eligible for inclusion in the HCCF pool for recovery purposes.

B. Support for a Connection Based USF Contribution Mechanism

The one issue that appears to draw near unanimous agreement in the comments filed is the common link between ICC reform and universal service reform and the need to revise the manner by which the existing USF mechanisms are funded. In its comments, USTA correctly points out that the PSTN benefits all users of telecommunications services[12] and that the base of contributions needs to be broadened and should be based on connections, rather than revenues. Comments filed by the ICF cite the benefits that universal service has had on all subscribers nationwide and the need for a long-term and stable funding source.[13] In its intercarrier compensation proposal version 7, the National Association of Regulatory Utility Commissioners (NARUC) cites the need for expanding the basis for

11 *See* Comments of Ohio PUC at 25.

12 *See* Comments of USTA at 39.

13 *See* Comments of the ICF at 16-17.

universal service contributions as the current interstate revenue base cannot be relied upon for the future.[14] While the most recent universal service funding contribution factor has dropped to 10.2 percent, the future trend for interstate and international revenues appears to be downward. With the likelihood that any reform to the existing ICC regime will result in additional dollars being allocated to existing universal service funds or a new bulk-billed access charge mechanism, the need to expand the USF contribution base and insure that all carriers contribute in a competitively neutral fashion deserves urgent attention.

C. LSS and ICLS Should be Included in the New Bulk-Billed Access Charge Mechanism

In addition to retaining intercarrier costs within the intercarrier cost recovery regime, CCAP strongly urges the Commission to reverse two cost shifts that have placed intercarrier cost recovery into universal service mechanisms. Specifically, CCAP recommends the Commission return local switching support (LSS) to the ICC regime. LSS provides support to incumbent LECs with fewer than 50,000 access lines to help defray their typically higher switching costs. Rural LECs have a smaller customer base over which to spread their switching costs. Accordingly, LSS allows rural incumbent LECs to receive a greater portion of their network switching costs from this program.

In addition to LSS, CCAP strongly urges the Commission to return ICLS support to the intercarrier compensation regime where it belongs. Access costs for local loop function are allocated among jurisdictions according to Commission rules. The interstate

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[14] *See* Notice of Written Ex Parte Presentation filed by NARUC in CC Docket No. 01-92 on May 18, 2005 (NARUC Version #7), Appendix C, p. 8.

allocation of the local loop represents the costs that interconnecting carriers should pay for use of the RLEC network. The Commission has ruled that to the extent these loop costs are not sensitive to traffic volumes, they should not be recovered on a per-minute basis. At the time of that decision, there was no rate structure – like the capacity rate structure proposed by CCAP – to recover these costs from interconnecting carriers on anything other than a per-minute basis. Consequently, the Commission shifted these interstate intercarrier costs to the federal universal service program (subsequently combined with long term support which was designed to offset RLEC interstate access loop cost rates in order to have a uniform national rate). Movement of ICLS back to the access/intercarrier regime to be recovered via the HCCF will more appropriately assign these costs to the carriers who use the RLECs' networks for delivery of their services to their customers. Adopting a connection mechanism for the recovery of such costs will avoid the potential mismatch recognized by the Commission – a mismatch which allowed the recovery of loop costs on a per-minute basis.

While CCAP appears to be the only party recommending inclusion of LSS and ICLS amounts -- formerly moved to the high-cost USF mechanism -- in a bulk-billed access charge mechanism, such amounts represent the recovery of embedded costs associated with building and maintaining the PSTN and are no different than the displaced access-related costs associated with reform of the ICC regime. Should the Commission ultimately choose to reduce interstate switched access charge rates in the name of ICC reform, CCAP requests that a bulk-billed access charge mechanism be created to capture costs associated with the reduction in such rates and included in a separate pool to be established by NECA. In its comments, NECA emphasizes the importance of pooling to rate-of-return carriers and that it believes it can make pooling work under a number of different ICC reform scenarios.[15]

IV. Other Advantages to CCAP's Plan

A. Interim Period Allowing a Voluntary Transition to a Capacity-Based ICC Regime

In the initial comment cycle, a number of entities filed comments in support of movement towards a capacity-based ICC regime.[16] CCAP believes that the Commission should allow carriers to transition to a capacity-based ICC regime on a voluntary basis during an interim period of time and then require all carriers to move to a capacity-based ICC regime at the end of a reasonable transition period. While CCAP is in general agreement with the recommendation put forth by NARUC to convert all per-minute termination charges to port (capacity) charges within five years,[17] CCAP believes that capacity-based charges should reflect costs associated with both the origination and termination of traffic between carriers. The rate-of-return carriers that make up CCAP currently have equal access obligations and as such, should be able to reflect the cost of originating access in any capacity-based charges. In the event that the Commission determines that originating access costs should not be recovered from carriers utilizing the networks of rate-of-return

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[15] *See* Comments of NECA at 22.

[16] *See, e.g.,* Comments of the Ohio PUC at 20; Comments of the Iowa Utilities Board at 2; Comments of Rock Hill Telephone Company d/b/a Comporium Communications, et. al at 6-8; NARUC Version #7 at Appendix C, p.6..

[17] *See* NARUC Version #7 at Appendix C, p. 6.

carriers with equal access obligations, the associated costs should be allowed to be recovered via the bulk-billed access charge mechanism or HCCF.

In its comments, the Ohio PUC recommends implementation of a capacity-based rate structure based on bandwidth for transport facilities and flat-rate port charges for switching.[18] In recommending the implementation of capacity-based charges, the Ohio PUC recognizes the increasing amount of packet-switched usage in the marketplace. However, CCAP does not agree with the recommendations put forth by the Ohio PUC regarding use of a TELRIC standard for the development of capacity-based transport and switching charges. Rather, CCAP believes that capacity-based charges should reflect rates similar to what a single-line business customer currently pays a carrier to utilize its local network. While such rates have historically been residually derived, they are part of a rate-of-return carrier's overall cost structure. As such, CCAP recommends that a rate-of-return carrier's embedded traffic-sensitive costs be utilized to establish the foundation or standard for determining the overall recovery of costs from capacity-based charges and the HCCF. For example, a rate-of-return carrier with an annual traffic-sensitive revenue requirement of $1 million as calculated in accordance with the Commission's Part 36 Separation and Part 69 Access rules and that recovers $300,000 in capacity-based charges from other carriers would recover $700,000 ($1,000,000 - $300,000) from the HCCF under the CCAP plan.

Under the CCAP plan, the establishment of a connection charge tied to a carrier's single-line business rate (B-1 rate) is intended to place higher-cost-to-serve areas on a more

[18] *See* Comments of Ohio PUC at 20.

equal footing with lower cost-to-serve areas so that customers residing in higher cost areas have access to the same level of services offered to customers residing in lower cost areas and at comparable rates. Today, customers residing in higher-cost-to-serve areas (such as rural areas) do not have access to the myriad of calling plans offered to customers in low cost areas because of the higher, per-minute-of-use access charges common in higher cost areas. By allowing carriers to reflect a capacity-based connection charge that cannot exceed the nationwide average B-1 rate, gaining access to rural networks is not as cost prohibitive as it is under the existing ICC regime and should allow carriers to offer their calling plans to customers residing in higher cost areas at a cost similar to providing such plans to customers residing in lower cost areas. Under the CCAP plan, the HCCF is the mechanism utilized to reflect and recover the higher-than-average costs associated with providing service to subscribers residing in higher cost-to-serve areas.

B. CCAP Plan Improves Existing Mechanisms that Benefit all Entities that Use the PSTN

The CCAP plan addresses the primary objectives cited by the Commission with regard to ICC reform. Contrary to some of the assertions raised in comments filed by the ICF, CCAP believes that a capacity-based approach to ICC reform can promote economic efficiency, preserve universal service and be both competitively and technologically neutral.

From the very start, CCAP attempted to craft an ICC reform plan that would maintain and encourage the promotion of retail service offerings that would benefit both urban and rural consumers alike and that are made possible by numerous providers that deploy different types of technologies. In addition, the CCAP plan recognizes the inherent differences and difficulties in serving customers in both low and high cost-to-serve areas and the need to preserve the existing PSTN. In the end, CCAP believes that ICC reform is best accomplished through improvements to the existing principles and mechanisms that have guided telecommunications policy in this country for years.

In its comments, the ICF mistakenly believes that the CCAP plan is intended solely to address the needs of rural ILECs. To the contrary, the capacity-based approach to ICC reform proposed by CCAP is intended to preserve the PSTN for use by all parties that need to utilize it for the delivery of telecommunications services to their customers. At the same time, the CCAP plan attempts to insure that customers residing in all areas of the nation will continue to have access to affordable basic local exchange service whether provided by the ILEC or a competitor.

One area where the ICF appears to have a problem with the CCAP plan is the mistaken notion that ILECs would not be required to purchase capacity from other carriers with which they interconnect.[19] Such an assumption is untrue. To begin with, the CCAP plan assumes that an ILEC can maintain its existing status as a wholesale provider of access to other carriers wishing to utilize its network, a retail provider of services to its customers, or both. What the CCAP plan does not do is force a carrier to become something it does not wish to become. Ultimately, technology and the marketplace may force all carriers to

[19] *See* Comments of ICF at 63.

become different types of providers, but the CCAP plan does not force such a course of action.

From a retail perspective, an ILEC providing retail services to its customers that requires the use of another carrier's facilities in order to offer the retail service would need to purchase capacity from the other carrier. What the CCAP plan attempts to do is to allow all carriers to purchase capacity from one another at a price that does not disadvantage any one group of retail customers. For example, the higher-than-average cost of serving rural areas of the nation is supposedly the reason why many IXCs do not offer similar calling plans to rural areas as are provided to customers residing in low cost urban areas. Under the CCAP plan, the cost of purchasing access to a rate-of-return ILEC's network would not be significantly different than the cost to purchase access on the network of a non rate-of-return carrier. Instead, any above-average cost differences inherent in higher cost-to-serve areas will be reflected in the HCCF that is supported by all carriers utilizing the PSTN.

From a wholesale services perspective, the CCAP plan allows a carrier to remain a wholesale access provider should it wish to do so. Accordingly, should a carrier not desire to offer any retail services to its end-user customers, aside from basic local exchange service, the carrier would receive compensation for use of its network (either originating and/or terminating access) on a capacity basis. The basis for the capacity charge would be the same to all carriers. As such, the capacity charges are intended to be competitively neutral and non-discriminatory to all carriers.

Based on recent data published by the Commission, the nationwide monthly average business line (B1) rate in urban areas is approximately $32.[20] To the extent that the B1 rate cited by the Commission is a reasonable reflection of the nationwide average B1 rate, such a rate would form the basis of a capacity-based charge under the CCAP plan. To the extent that a carrier needed less than the $32 per connection to recover its existing per-minute-of-use based intercarrier compensation, the carrier would calculate and charge the lower rate. To the extent that the $32 per connection fee does not cover a carrier's existing intercarrier compensation obligations, the carrier would be allowed to increase its monthly SLC charge up to the existing, maximum cap established by the Commission. Any additional ICC-related revenues needed to keep a carrier whole would be recovered from the HCCF.

In the example cited, the $32 connection charge would be assessed on a DS0 basis. Accordingly, a DS1 level of capacity would cost a carrier $768 per month and would reflect traffic-sensitive-related costs for both local switching and transport. Ultimately, various rate design alternatives could be established by NECA that could reflect separate charges for local switching and transport.

Cost justification for the connection charge would be based on a carrier's embedded interstate costs and intrastate access revenues associated with providing local switching and transport-related functions. Similar to the manner in which ICLS is calculated

[20] *See Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, Tables Compiled as of April 2005 (rel. June 21, 2005), Table 13.2.

today, rate-of-return carriers would calculate an ICC revenue requirement and offset the requirement by amounts collected from a capacity-based connection charge. Any remaining amounts would be recoverable via the HCCF mechanism. As the ICC revenue requirement for rate-of-return carriers would reflect a unitary rate-of-return, amounts reflected from connection charges and the HCCF would be cost justified. For non rate-of-return carriers such as the RBOCs, connection charges could be incorporated in a carrier's price-cap filing.

C. CCAP Plan Utilizes the Efficiencies of the Tariff Process

CCAP supports the continued use of tariffs by rate-of-return carriers. As indicated by NECA in its comments, tariffs are an effective and economical means for implementing intercarrier compensation reform.[21] CCAP echoes the concerns raised by NECA with regard to the difficulties in having over 1,000 small ILECs negotiating interconnection agreements with numerous carriers, both large and small. In addition, larger carriers have significant market power and could utilize such powers during the negotiation process to the disadvantage of smaller carriers. Perhaps the greatest threat to the guarantee of a nationally interconnected network is the concentration of market power into the hands of a few large carriers. Even today, in the highly competitive world of internet services, problems exist. Large, national providers team up in peer-to-peer organizations that disadvantage smaller carriers and those serving more rural markets. As the large get larger, such as the recent purchase of AT&T by SBC and MCI by Verizon, the ability of high cost rural carriers to obtain affordably priced interconnection dwindle. To make matters even worse, the largest providers not only control traditional circuit-based

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21 *See* Comments of NECA at 19.

networks, but also dominate the wireless market and are accumulating major portions of the backbone of the emerging packet network. The Commission must ensure that the largest markets are open and affordable to all consumers, not only those in other large markets but also those in smaller, more rural or isolated markets.

The pooling process administered by NECA utilizes a tariff that has proven to be a practical and efficient means for the provision of access services offered by pool member companies. Absent the establishment of very detailed rules and procedures for the negotiation of interconnection agreements, CCAP believes that the Commission should not rush to end the use of tariffs, especially for rate-of-return carriers.

D. CCAP Advises Against Use of the CALLS Rate for Rate-of-Return LECs

CCAP does not believe that reducing the composite interstate switched access charge rate to $0.0095 per minute is in the best interest of rate-of-return carriers. CCAP believes that such a piece-meal approach to ICC reform will only create additional incentives for arbitrage as indicated in the comments filed by JSI. Moreover, absent an indication of what, if any, reforms may be forthcoming with respect to the federal universal service mechanisms, CCAP urges the Commission to wait before adopting any ICC reform policies that will result in additional costs being transferred for possible recovery from the federal USF mechanisms.[22]

[22] *See* Comments of JSI at 13 ("for JSI clients, on average, a reduction in the interstate composite switched access charge rate to the CALLS rate would create a shift in interstate cost recovery of approximately $5 to $6 per access line, per month that would need to be recovered either through assessment of higher SLCs and or from an existing or new USF mechanism.")

CCAP agrees with JSI that the proposed CALLS rate of $0.0095 per minute is not a cost based rate. In rejecting the application of the CALLS rate by rate-of-return carriers in its MAG Order, the Commission recognized the fact that the CALLS rate is not representative of the costs of rate-of-return carriers.[23] CCAP maintains that nothing has changed since adoption of the MAG Order that would justify imposing a composite rate that does not reflect the embedded interstate local switching and transport costs of rate-of-return carriers.

E. A Capacity-Based ICC Regime Remains Functional In a Packet Network

Any new ICC regime must address compensating carriers for use of their traditional circuit-switched networks as well as allow for the recovery of costs associated with the development and maintenance of emerging packet networks. One major advantage of an ICC regime based on capacity is the ability for such a regime to be utilized in a packet environment. It seems clear that a minutes-of-use-based ICC regime will not work in a packet environment and as more traffic migrates away from the PSTN to packets, the need to have an ICC regime that works in both environments is critical. CCAP maintains that a capacity-based ICC regime can be structured in a manner that allows for an easier transition to packet networks than a minutes-of-use based ICC regime.

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23 *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (MAG Order) at paras 41-44 & 207.

V. Conclusion

As demonstrated above, a critical component of ICC reform is to clearly distinguish between USF and ICC in order to ensure that those eligible to receive the various types of funding are distinguished from those who should pay for the funding. The CCAP plan accomplishes this task by classifying high cost loop funding along with the social policy initiatives of schools and library discounts, rural health care, and low income support as universal service support and urging the Commission to greatly expand the funding base to support these objectives. Additionally, the CCAP plan establishes a nationwide connection fee for compensation to carriers for use of their networks in order to maintain the historical purpose of ICC of compensating carriers for the use of their networks and to ensure the equal availability of services at comparable rates in urban and rural areas. For these and the numerous other advantages to the CCAP plan enumerated herein, the Commission should adopt the CCAP plan to accomplish its goals set forth in its ICC reform proceeding.

THE COALITION FOR CAPACITY-BASED ACCESS PRICING
[SEE LIST OF COMPANIES IN ATTACHMENT A]

Respectfully Submitted by their Attorney

/s/ M. John Bowen, Jr.
M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, PA
Post Office Box 11390
Columbia, South Carolina 29211
Telephone: (803) 799-9800
Facsimile: (803) 753-3219
Email: jbowen@mcnair.net; pfox@mcnair.net

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ATTACHMENT A

THE COALITION FOR CAPACITY-BASED ACCESS PRICING
Participating Companies

Bluffton Telephone Company, Inc.

Chesnee Telephone Company

Chester Telephone Company

Farmers Telephone Cooperative, Inc.

Hargray Telephone Company, Inc.

Home Telephone Company, Inc.

Horry Telephone Cooperative, Inc.

Lockhart Telephone Company

North State Telephone Company

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

PBT Telecom

Ridgeway Telephone Company

Sandhill Telephone Cooperative, Inc.

West Carolina Rural Telephone Cooperative, Inc.